

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Kenneth Brian Young,

Civil No. 05-0454 (RHK/SRN)

Plaintiff,

v.

ORDER

**Minnesota Department of Corrections at
Rush City, Sergeants Selk and Van Coolidge,
Officer Cheryl Wendorff, Warden Robert Feneis,
Associate Wardens Jim Zawacki and Joseph Cosgrove,
and Fredrick Bernard Tyus, Richard Joseph
Martin, and Edward Wayne Whitefeather,**

Defendants.

Gregory S. Bachmeier and Phillip F. Fishman on behalf of Plaintiff

Richard L. Varco, Jr. on behalf of Defendants MCF-RC, Selk, and Van Coolidge, Officer Cheryl Wendorff, Warden Robert Feneis, and Associate Wardens Jim Zawacki and Joseph Cosgrove

Richard Joseph Martin, pro se

Edward Wayne Whitefeather, pro se

Frederick Bernard Tyus, no appearance

The above-entitled matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Susan Richard Nelson dated January 31, 2006. No objections have been filed to that Report and Recommendation in the time period permitted.

Based on the Report and Recommendation of the Magistrate Judge, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

1. Defendants' Motions to Dismiss (Docs. No. 2 and 11) are **GRANTED in part and DENIED in part** as follows:
 - a. To the extent that Plaintiff's § 1983 claims are asserted against Defendants Martin and Whitefeather, the motions are **GRANTED**;
 - b. To the extent that Defendants seek to dismiss Plaintiff's remaining claims for assault and battery, the motions are **DENIED**.
2. Defendant Martin's Motion to File Request for Hearing on Motion to Dismiss (Doc. No. 6) is **DENIED as moot**.

DATED: 2/21/06

s/Richard H. Kyle
RICHARD H. KYLE
United States District Court Judge